

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456
Master File No. 1:01-CV-12257-PBS
Sub-Category Case No. 1:08-CV-11200

THIS DOCUMENT RELATES TO:
*United States ex rel. Linnette Sun and Greg
Hamilton, Relators*
v.
*Baxter Hemoglobin Therapeutics and Baxter
International Inc.*

Judge Patti B. Saris

[PROPOSED] ORDER DISMISSING RELATORS' COMPLAINT

The Court has considered Baxter International Inc.'s Motion To Dismiss Relators' Complaint and finds and orders as follows:

1. Count I is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).
2. Count II is dismissed with prejudice for lack of standing, and/or failure to state a claim upon which relief can be granted, and/or failure to allege the fraud with particularity.
3. Count III is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).
4. Count IV is remanded to the District of Colorado.
5. Count V is remanded to the District of Colorado.
6. Count VI is remanded to the District of Colorado.
7. Count VII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

8. Count VIII is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

9. Count IX is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

10. Count X is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

11. Count XI is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

12. Count XII is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

13. Count XIII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

14. Count XIV is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

15. Count XV is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

16. Count XVI is dismissed with prejudice for lack of subject matter jurisdiction, and/or for failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b), and/or under the “first to file” rule, and/or under the doctrine of accord and satisfaction.

17. Count XVII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

18. Count XVIII is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

19. Count XIX is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

20. Count XX is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

21. Count XXI is dismissed with prejudice for lack of subject matter jurisdiction and/or failure to allege fraud with the particularity required by Fed. R. Civ. P. 9(b).

22. Count XXII is remanded to the District of Colorado.

23. Count XXIII is remanded to the District of Colorado.

Dated: _____

Patti B. Saris
United States District Judge